

## A. Public Hearings

### 1. Required Public Hearings

Public hearings are required by the Education Code at various stages of the reorganization process. Public hearings shall be called and conducted by the county committee on the following occasions:

- a. **Reorganization by County Committee's Recommendation.** When the county committee, on its own initiative, proposes a plan for reorganization of any area, a public hearing must be held within the affected area. One or more public hearings must be held in the area proposed for reorganization between the time of adoption of a tentative recommendation and the time of adoption of a final recommendation. (EC 35720.5)
- b. **Reorganization by Petition of 10 Percent of District Voters.** A preliminary public hearing must be held at a regular or a special meeting. Following this hearing, the committee must grant or deny the petition. If the petition is granted, a tentative recommendation must be adopted, following which the county committee must hold one or more public hearings in the area proposed for the reorganization. (EC 35721)
- c. **Reorganization by Petition of 25 Percent of Voters.** At least one public hearing in each of the affected school districts is required to be held by the county committee within 60 days of receipt of the petition from the county superintendent. (EC 35705)
- d. **Change in Trustee Areas.** When any proposal is made to establish trustee areas, rearrange the boundaries of trustee areas, or increase to seven or decrease to five the number of members of a governing board, the county committee must call and conduct at least one public hearing in the district on the matter. (EC 5019)
- e. **California Environmental Quality Act (CEQA) Hearing.** When a county committee considers a proposal to transfer territory, it becomes, for purposes of CEQA, the lead agency. As such, it must conduct an initial study and hold a hearing. See Chapter 5, Section D, "Environmental Concerns."

### 2. Other Public Hearings

At its own option, the county committee may call and conduct additional public hearings over and above what is required by the Education Code and may hold a public hearing regarding any matter pending before it. The committee may also designate any member to hold and conduct any public hearing after giving notice in the manner described below.

### 3. Notice of Hearings

The public hearings required by the Education Code must be called:

- a. In the case of a hearing on a "25 percent voter" petition, by sending a notice to the governing board of each school district involved and to the persons (no more than

three) designated as the “chief petitioners” and to all persons who have requested notice of the hearing at least 10 days prior to the hearing. (EC 35705)

- b. In the case of a county committee proposal (or after a “10 percent voter” petition), by sending a notice to the governing board of each school district involved and to the chief petitioners as appropriate at least 10 days prior to the hearing. (EC 35705, 35720, 35721) This notice of a public hearing must be either:
  - i. Posted at three public places in the school districts involved and at every school in each district involved (EC 5362, 35720.5)
  - or*
  - ii. Published in a newspaper of general circulation published within the school district, or, if there is no such newspaper, then in any newspaper of general circulation that is regularly circulated in the district. (EC 5363, 35720.5)

The notice must contain information about the time, place, and purpose of the hearing. (EC 35720.5)

#### 4. Public Hearing Procedures

There are no Education Code requirements for the procedures relating to public hearings; therefore, it is suggested that the county committee conducting such hearings adopt a set of rules under which public hearings are conducted. The following outline of procedures has been adopted by the Santa Clara County Committee on School District Organization. These steps are only suggestions and may be changed as the individual agency sees fit.

- a. At or before the hearing at which oral comments from the public are to be received, the county committee may determine the total amount of time that will be devoted to hearing such oral comments and may determine the time to be allotted to each person or to each side of an issue.
- b. The notice of the hearing may include encouragement to persons wishing to address the committee to preregister their intentions with the committee.
- c. At the hearing, members of the public may be recognized by the chair to speak. All remarks made must be germane to the business at hand and must be addressed to the chair. No person other than the person having the floor and members of the county committee will be permitted to enter the discussion.
- d. Public speakers must not directly question individual members of the county committee without the express permission of the chair, nor will individual committee members address questions directly to the speaker without the permission of the chair. Public speakers must not relinquish their time to others without the approval of the chair.
- e. Demonstrations, banners, and distribution of literature will not be permitted before or during the public hearing, nor will solicitation of signatures for petitions be permitted.

- f. At the start of the hearing, the chair should announce the rules of order for the hearing. Documents useful for conducting a public hearing are provided in appendixes J and K.

## **B. Elections**

Elections for reorganization proposals are conducted in the same manner as elections for governing board members. (EC 35710, 35756 et seq., 5000 et seq.) Elections Code Section 12115 also contains provisions governing elections and posting of notices for elections.

1. Transfer Without Elections: An election is *not* necessary to transfer territory from one district to another if the transfer approved by the county committee:
  - a. Involves uninhabited territory *and*
    - i. The owner (or majority of owners) has consented to the transfer *and*
    - ii. The governing boards of all affected districts have consented to the transfer *or*
  - b. Involves inhabited territory *and*
    - i. The territory constitutes less than 10 percent of the assessed valuation of the district losing the territory *and*
    - ii. All the governing boards have consented to the transfer. (EC 35709)
2. Transfer with Elections: An election is necessary to transfer territory from one school district to another if, with respect to the approval by the county committee:
  - a. The sole owner or a majority of the owners of uninhabited territory objects to the transfer (EC 35709) *or*
  - b. One or more of the governing boards of a school district affected by the transfer objects to the transfer (EC 35709) *or*
  - c. The petition involves territory that constitutes 10 percent or more of the assessed valuation of the district losing the territory. (EC 35710)
3. State Board of Education Elections: The State Board of Education must call an election whenever it approves a petition or plan for reorganization. It does so by notifying the county superintendent of schools having jurisdiction over the districts affected, who, within 20 days, must call an election to be conducted at the next regular election. (EC 35755, 35756)
4. Elections Following Appeals of Committee Actions: The State Board of Education, upon either affirming or reversing the action of the county committee, shall notify the county committee of its decision. (EC 35710.5[d]) The county committee shall then notify the county superintendent having jurisdiction over the districts affected. (EC 35710.5[d]) If an election is required, the county superintendent, within 35 days, must call an election to be conducted in the area to be determined by the State Board of Education at the next available regular election. (EC 35710, 35710.51)

Table 7.1 provides a time line of events surrounding the election process.

**Table 7.1**  
**Sample Time Line**  
**for Reorganization Election**

<i>Day</i>	<i>Date</i>	<i>Event</i>	<i>Code Reference</i>
1	June 21	County superintendent receives notification of approval from State Board of Education	Ed. Code 35755
20	July 11	County superintendent calls election	Ed. Code 35756
		County superintendent prepares statements	Ed. Code 35757
		County superintendent causes pro, con, and rebuttal arguments to be filed	Ed. Code 35758
		County counsel submits impartial analysis	El. Code 9500
		Rebuttal arguments submitted	El. Code 9504
27	July 18	First day to file for board election	El. Code 10603
52	August 10	Last day to file for board election if incumbents file for reelection	El. Code 10603
57	August 15	Last day to file for board election if incumbent does not file	El. Code 10604
140	November 5	Election day	
142	November 7	County clerk begins official count of results	El. Code 15301
153	November 25	County clerk certifies election results	El. Code 15308
160	November 25	County superintendent certifies election and calls first meeting of governing board	Ed. Code 35102
192	December 1	Board of supervisors files boundary changes with State Board of Equalization	Gov. Code 54900, 54901, 54902, 54903.1
192	December 27	County superintendent notifies appropriate agencies	Ed. Code 35763
192	December 27	Board of supervisors enters order to create and/or change boundaries	Ed. Code 35765

Note: Ed. Code = Education Code

El. Code = Elections Code

Gov. Code = Government Code

The State Board of Equalization requires filing by December 1 even if the board of supervisors has not taken final action.

#### 4. Supporting Actions

##### a. Calling Elections

Subsequent to the approval of any reorganization proposals, the State Board of Education must provide notice to the county superintendent of schools having jurisdiction over the affected school districts. (EC 35755) Within 20 days after receiving the notification from the State Board of Education or from the county committee, the county superintendent of schools must call an election, to be conducted at the next available regular election, in the territory of districts as determined by the State Board of Education or as determined by the county committee. (EC 35710, 35756) When a district of 900 average daily attendance (a.d.a.) or less opposes a transfer, the area of election shall include that district and the measure must pass both in that district and in the remainder of the territory. (EC 35756.5)

##### b. Statement of Official Information and Statistics

The county superintendent of schools must prepare a statement of official information and statistics relating to the proposed reorganization that must include, but is not limited to, the plans and recommendations, the revenue limit per pupil, the rate of growth, the expected enrollment, and the support from the state that can be expected if such area maintains an adequate school program. Such information must be based upon the school year last completed before the date of the election. (EC 35757)

##### c. Arguments For and Against the Measure

The county superintendent of schools is responsible for having the arguments for and against the ballot measure prepared and distributed. The argument shall not exceed 500 words.

The argument in favor of the recommendation must be prepared by the president of the county board (county committee) or by a proponent of the recommendations designated by the president.

The argument against the recommendations must be prepared by a member of the county board (county committee) who voted against the recommendations or, if no member is opposed, by an elector designated by the county superintendent of schools (county committee chair) who has appeared before the board or at a public hearing in opposition to the recommendation. (EC 35758)

Arguments must be submitted to the county clerk (registrar/recorder) within a time frame as specified by the county clerk that provides for a time reasonably necessary to prepare and print the arguments and to permit 10-calendar-day public examination. (Elections Code 9502)

d. Rebuttals to Arguments

The county clerk must send copies of the argument in favor of the measure to the author of the argument against, and copies of the argument against to the author of the argument in favor. Rebuttal arguments must not exceed 250 words.

The rebuttal arguments must be filed with the county clerk not more than 10 days after the final date for filing direct arguments. (Elections Code 9504)

e. Cost of Election

The cost of preparation and distribution of the arguments, the recommendations of the county board (county committee), and the cost of any election held pursuant to Article 4 of the Education Code must be a charge against the general fund of the county. If the reorganization involves a district situated in more than one county, the cost of the election must be prorated against each county in the same proportion as the assessed valuation of the territory of the proposed new district residing in such county bears to the total assessed valuation of the proposed new school districts. Assessment of election costs may be different in fiscally independent counties. In such cases, the documents authorizing fiscal independence would be controlling. (EC 35759)

f. Campaign Literature; Reorganization Measure

Any written material or other campaign literature that is designed to promote either the passage or defeat of a ballot measure relative to the reorganization of school districts must bear on its face, in a conspicuous place, either of the following:

- i. The names and residence addresses of the chair and secretary or the names and residence addresses of at least two officers of the organization issuing it, if issued by an organization, *or*
- ii. The name and residence address, with the street and number, if any, of any individual responsible for it, if issued by an individual or individuals.

If any person believes that campaign literature contains false and misleading statements, he or she may bring an action in the superior court for injunctive relief against further circulation of the literature, and if the court finds that the literature does, in fact, contain false and misleading statements, it may enjoin any further circulation of the literature. (EC 35760)

g. Election: Wording of Ballot Measure

The words to appear on the ballot for a reorganization measure shall be:

- i. Reorganization of school districts—Yes
- ii. Reorganization of school districts—No

Similar words may be used. If the reorganization plans include a proposal for trustee areas, then such proposal must be considered a part of the reorganization

proposition to be voted upon, and the ballot shall include wording to that effect. (EC 35762)

h. Notice of Election Results

The county superintendent of schools, upon the completion of the canvass of the election returns, must notify the State Superintendent of Public Instruction, the board of supervisors, and the governing board of each affected school district of the number of votes cast for, and the number of votes cast against, the reorganization of school districts in each school district and also the total number of votes cast for, and the total number of votes cast against, the reorganization of school districts. (EC 35763)

i. Majority Vote Requirement

For a reorganization proposal to be successful, a majority of the votes cast must be in favor of the measure. (EC 35764)

j. Opposition to Transfer by Affected School District with 900 or Less A.D.A.

If a governing board of a school district affected by a transfer of territory is opposed to the transfer and has an a.d.a. of 900 or less, the territory in which the election is held must include the entire territory of the district(s) opposed to the transfer. Each district so included in an election must bear the additional cost of holding the election in that portion of its territory not otherwise included in the election. For the measure to carry, a majority of the votes cast in the school district opposing the transfer and a majority of the votes cast in the entire territory in which the election is held are needed. (EC 35756.5)

k. Order by County Board of Supervisors to Create Reorganization Plan

The county board of supervisors, upon receiving a certificate of election results indicating approval of the reorganization proposal, must make an order to create, change, or terminate the boundaries of school districts. The board of supervisors or the county board of education must cause to be filed with the appropriate governmental agencies a copy of the order and a map or plat indicating the boundaries. (EC 35765)

l. Legal Change of Boundaries

After one year has expired from the date of the order by the board of supervisors, the reorganization is considered to be legally reorganized, and no suit may be made against the legality of the reorganization. (EC 35766)

m. Consolidation of Election to Form New District with New Governing Board Member Election

The county superintendent of schools may consolidate the election for the purpose of electing the governing board of a unified school district with the election for the formation of a new district. The measure regarding the formation of a unified school district and any other proposition to be voted upon must appear on the

ballot before the list of candidates for election to the governing board of the proposed unified school district. (EC 35767)

The county committee on school district organization may amend a petition to require consolidation of elections. (EC 35705.5) The State Board of Education has the same authority. (EC 35754)

#### 5. Process: Conduct of Elections

- a. Within 20 days after receiving the notice of the approval of a unification proposal from the State Board of Education, the county superintendent of schools must call an order of election to be conducted at the next available regular election in the territory as determined by the board. (EC 35755, 35756)

If a transfer of territory is approved by the county committee, the county committee must notify the county superintendent of schools, who shall call an election in the territory as determined by the county committee. This election is to be conducted at the next regular election. The county superintendent of schools must call the election within 35 days following the receipt of the notification. (EC 35710, 35710.51)

If the proposal is for unification, the county superintendent of schools may consolidate the election for the purpose of electing the governing board of the new unified school district. (EC 35767)

In addition, if the reorganization plans call for a proposal for trustee areas, the proposal must be considered part of the reorganization measure and the wording on the ballot must include such. (EC 35734)

- b. The election must be conducted on the next available regular election date in the territory as determined by the State Board of Education or the county committee. (EC 35756)
- c. The county superintendent of schools must prepare the statement of official information and statistics (usually submitted to the registrar, recorder, or county clerk 88 days prior to the election date). (EC 35757)
- d. The county superintendent of schools is responsible for having the arguments for and against prepared. The arguments must be submitted to the registrar/recorder/county clerk within a time frame as specified by the registrar/recorder. (EC 35758 and Elections Code Section 9502)
- e. Rebuttal arguments are prepared by the authors of the arguments for and against. The rebuttal arguments must be filed with the registrar/recorder not more than 10 days after the final date for filing direct arguments. (Elections Code Section 9504)



## C. Area of Election

### 1. Background

When a county committee on school district organization approves a transfer of territory pursuant to Education Code Section 35710, the matter goes to an election “in the territory of the district as determined by the county committee. . . .” Similarly, when the State Board of Education approves a reorganization proposal, Education Code Section 35756 requires that the election be held “in the territory as determined by the State Board of Education.”

In December, 1982, the California Supreme Court in *Fullerton Joint Union High School District v. State Board of Education* (1982), 32 Cal.3d 779, invalidated a State Board of Education decision that denied the vote to the electors in the Fullerton Joint Union High School District. There, the board had approved a plan to create a new unified K–12 school district by removing a portion of the Fullerton Joint Union High School District and unifying it with the K–8 Yorba Linda Elementary School District. In approving the plan, the State Board of Education limited the election to the area proposed for removal and unification (i.e., to the Yorba Linda territory) and not to the entire Fullerton Joint Union High School District. The Supreme Court applied the strict scrutiny rule and concluded that this limitation of the electoral franchise was an unconstitutional denial of equal protection. As a result, the electors in the entire Fullerton Joint Union High School District were allowed to vote because they had a substantial interest in various aspects of the unification proposal.

On the basis of the rationale in *Fullerton*, the California Department of Education’s Legal Office issued an opinion, dated November 6, 1989, to the State Board of Education and State Superintendent of Public Instruction. The opinion recommended a three-step process in determining the area of election in school district reorganization proposals. Step 1 identifies all the affected school districts, which would include districts that lose territory as well as districts that gain territory. Under *Fullerton*, all the electors in the identified districts have a presumptive right to vote. Step 2 determines whether there is a compelling interest on the part of the government to reduce the area of election to an area that is less than the entirety of the affected districts and whether such a reduction is necessary to further the purpose of the proposed reorganization. Step 3 determines whether the compelling interest is outweighed by substantial interests of the voters who are denied the vote. The area of election should be expanded to include those voters with substantial interests (as opposed to incidental or no interest). The State Board of Education used this process with success until 1992, when two court decisions caused the law regarding determinations on school district reorganization area of election to be extremely unsettled.

### 2. *Pasadena Unified School District v. State Board of Education*

In February, 1992, the California Second District Court of Appeal invalidated a State Board of Education transfer of territory decision in which the board limited the area of election exclusively to the residents of the territory proposed to be transferred.

(*Pasadena Unified School District v. State Board of Education* (1992), 9 Cal.App.4th 767) Applying the strict scrutiny rule, the court found that the State Board of Education did not separate interested and uninterested voters but rather two groups, each with a substantial although different interest in the outcome of the election. In that case, the transfer of territory would cause neither a significant financial impact nor a substantial effect upon the curriculum or facilities of either affected school district. However, a few white students would be transferred from the Pasadena Unified School District. In concluding that the reduction in area of election was unconstitutional, the court stated that:

Nevertheless, the racial impact upon the whole would be significant; immediately upon morale, and in the future when this reorganization would serve as a model and precedent for other neighborhoods hoping to erect a barrier against the acute social problems of its predominantly minority district. Today segregation is more apt to occur in nibbles than gulps. (*Pasadena, supra*, at page 778)

Even though the transfer of white students from the Pasadena Unified School District to the San Marino Unified School District would arguably have “no detectable statistical impact on the total racial/ethnic composition of either school district” (*Pasadena, supra*, at pages 774, 775):

The fact Pasadena Unified School District’s [interest] includes a desire to retain a declining white student base is not a reason to disenfranchise its citizenry. (*Pasadena, supra*, at page 778)

The *Pasadena* decision apparently includes morale as an interest to be measured for substantiality and suggests that, even though the racial impact of a proposed transfer of territory is statistically undetectable, the losing district’s desire to retain its white pupil population is a substantial interest of the voters.

Although the rationale in *Pasadena* goes beyond that in the *Fullerton* decision, the *Pasadena* decision may not be cited as precedent. Pursuant to the rules of court, the *Pasadena* appellate court decision was depublished upon grant of review by the Supreme Court. The Supreme Court dismissed the review and remanded the cause to the Court of Appeals as improvidently granted; however, the Supreme Court did not order the *Pasadena* decision and opinion to be published. Therefore, it has no precedential effect. The decision was printed in 9 Cal.App.4th 767 solely for the purpose of tracking pending review by the Supreme Court.

Although county committees are free to use the principles expressed in the *Pasadena* decision, caution should be exercised because that decision provides no citable legal support.

### 3. *Board of Supervisors v. LAFCO*

In November, 1992, the California Supreme Court decided *Board of Supervisors of Sacramento County, et al., v. Local Agency Formation Commission (LAFCO)* (3 Cal. 4th 903). Although this case involves a petition to incorporate a portion of a county rather than reorganize a school district, the decision is significant in that it seems to

confuse the importance, if not the validity, of the *Fullerton* decision. Also discredited is *Citizens Against Forced Annexation v. Local Agency Formation Com.* (1982), 32 Cal.3d 816, a companion case to *Fullerton*, dealing with municipal annexation elections.

In the 1992 *LAFCO* case, a petition was filed with the Sacramento Local Agency Formation Commission to incorporate the Citrus Heights region of Sacramento County. The county opposed the petition, contending that incorporation would result in a severe adverse financial impact on the county. The proposal contained no racial issues. The legal issue was whether Government Code Section 57103 violates the equal protection clause of the federal and California constitutions.

As relevant to the case, Government Code Section 57103 provides that:

In any resolution ordering a change of organization or reorganization subject to the confirmation of the voters, the conducting authority shall call an election:

(a) Within the territory of each city or district ordered to be incorporated, formed, disincorporated, dissolved, or consolidated.

In short, this statute requires a reduced area of election without any need to show a compelling state reason for the reduction. The Supreme Court held that this provision is constitutional. The court said that:

When a law impinges on certain fundamental rights—and the right to vote may be the most fundamental of all . . . a discriminatory law will not be given effect unless its classification bears a close relation to the . . . [promotion] of a compelling state interest, the classification is necessary to achieve the government's goal, and the classification is narrowly drawn to achieve the goal by the least restrictive means possible.

This is called the strict scrutiny test for constitutionality.

For most legislation, however, a court will apply the rational basis test . . . [T]he classification must bear some fair relationship to a legitimate public purpose.

We agree that [Government Code] section 57103 touches the right to vote. The mere fact, however, that a state law touches on the right to vote does not necessarily require the application of strict scrutiny . . . [unless the] classification has a real and appreciable impact upon the equality, fairness and integrity of the electoral process . . . [S]ection 57103's impact . . . falls well short of the real and appreciable. . . . (*LAFCO, supra*, at pages 913, 914)

Therefore, in the *LAFCO* case, the court applied the rational basis test on grounds that:

the residents of the area to be incorporated and the remaining residents of Sacramento County possess, on the face of the law, genuinely different relevant interests. Thus, though the right to vote is perforce implicated whenever the state specifies that certain people may vote and others may not, we conclude that the essence of the case is not the fundamental right to vote, but the state's plenary power to set the conditions under which its political subdivisions are created. For

that reason, the impairment of the right to vote is insufficiently implicated to demand the application of strict scrutiny. (*LAFCO, supra*, at page 917)

In addition, the court found that the county residents were sufficiently accommodated with respect to demography and the financial impact was small. (*LAFCO, supra*, at page 923) In applying the rational basis test, the *LAFCO* court cited *Lockport v. Citizens for Community Action* (1977), 430 U.S. 299:

If there “is a genuine difference in the relevant interests of the groups that the state electoral classification has created,” then an “enhancement of minority voting strength” is permissible unless it “nonetheless amounts to invidious discrimination in violation of the Equal Protection Clause.” (*LAFCO, supra*, at page 916)

The fair relationship to a legitimate public purpose that is required by the rational basis test was found in Government Code Section 56001, which expressed the legislative intent “to encourage orderly growth and development”; that “the logical formation and determination of local agency boundaries is an important factor in promoting orderly development.” Thus, “if large relatively disinterested majorities could veto incorporations, . . . the result might well hinder orderly growth and development.” To deny the incorporating voters the final say in their own desire for self-government would lessen political participation, not increase it. (*LAFCO, supra*, at pages 923, 924)

The court in *LAFCO* held that the *Fullerton* case lacks authority as precedent because the reasoning in that case was embodied in a plurality opinion of only three justices. In addition, the racial impact found in *Fullerton* was not present in the *LAFCO* case. (*LAFCO, supra*, at page 918) Nevertheless, the court in *LAFCO* recognized federal case law reasoning that, even though state government has a wide latitude in creating various types of political subdivisions, that latitude must necessarily be qualified by a state’s fundamental constitutional obligation to avoid racial or other invidious discrimination. (*LAFCO, supra*, at pages 915, 916)

The court in *LAFCO* also found faulty the holding in the *Citizens* case, *supra*. The court stated that:

[W]e also find constitutionally infirm the reliance of *Citizens* on the goal of orderly development and provision of municipal services . . . to justify the city voters’ exclusion from the election. . . . *Citizens* reasoned that the exclusion was justifiable because the city dwellers might veto the annexation, thereby interfering with those goals. But if the city residents have a fundamental right to vote, then the state’s putative interest in excluding them from voting because they might veto the annexation is constitutionally impermissible. As correctly stated in *Fullerton*, “It is, of course, clear that the state cannot claim a compelling interest in excluding voters because of how they may vote.” (*LAFCO, supra*, at page 920)

With regard to *LAFCO*:

Local counsel should take note of an unpublished 1994 opinion by the Second Appellate District Court in *Alhambra City and High School Districts v. California*

*State Board of Education*, Appellate Court No. BS023586. Although lacking precedential value, this decision marks the first time any state court has applied the California Supreme Court's *LAFCO* holding to a school district reorganization dispute.

In *Alhambra City*, a Los Angeles area school district filed a post-election challenge to the State Board of Education's approval of a petition to form the San Gabriel Unified School District and its decision setting the area of election. The measure had been approved by the local electorate designated by the State Board. Among other contentions, the school districts alleged that the State Board had improperly limited the area of election, on the reorganization petition, to voters within the proposed new school district. Applying the strict scrutiny analysis established in *Fullerton*, the trial court agreed with the school districts and ruled that the area of election as specified by the State Board of Education was unconstitutional.

On appeal, the Second Appellate District Court overruled the trial court and validated the State Board's decision regarding the area of election. The appellate court held that strict judicial scrutiny need only be applied when a fundamental interest is involved. In *Alhambra City*, no such interest was involved. The state's plenary power to set the conditions under which its political subdivisions are created was involved rather than the fundamental right to vote. The right to vote had only been touched upon because the excluded voters did not have a substantial interest in the outcome of the election. Their interest, as identified by the appellate court, was simply financial. The court thus held that strict scrutiny was not warranted, and the board's decision passed constitutional muster because it was rationally related to a legitimate governmental purpose.

#### 4. Post-Election Challenges

Although Education Code Section 35766 provides for a full year after the final order is entered by the board of supervisors to challenge a district reorganization, there are at least two cases in which state courts have barred opponents from proceeding with post-election legal challenges. Those complainants were barred under the legal doctrine of laches.

In a 1993 case, *Grant Joint Union High School District v. State Board of Education*, Third District Appellate Court No. CO14532, petitioner school district challenged the proposed reorganization approximately *three* months after the final order from the Sacramento County Board of Supervisors and *13* months after the measure had been approved by the voters. The court held that laches applied because both the county committee and the Natomas Union Elementary School District would be unduly prejudiced by complainant school district's delay. Both entities had expended significant funds subsequent to approval of the reorganization petition by the State Board of Education. Also, the complainant school district could not provide a reasonable basis for its delay in filing legal claim. Although significant, this case is not published and therefore lacks precedential value.

A more current example is *City Council of the City of Folsom v. California State Board of Education et al.*, Third District Appellate Court No. CO24384. In this case the trial court dismissed the complainant's Writ of Mandamus on the basis that the complainant had not filed its challenge until three weeks after the election and approximately seven months after State Board of Education approval. The complainant has appealed the trial court's decision and a final determination is currently pending in the Third Appellate District Court. No appellate decision is expected until late 1997.

## 5. Conclusion

The court's reasoning and comments in the *LAFCO* decision bring considerable doubt about the efficacy, if not the validity, of the prior decisions in *Fullerton* and *Citizens*. As noted above, one appellate court, in an unpublished opinion, has already applied the ruling in that case to a school district reorganization. The *LAFCO* court appears to support the view that, in school district reorganization matters, a determination of the area of election is not subject to strict scrutiny but rather may be tested only on its rational basis even though the proposed reorganization may create a racial impact that may be of great concern to excluded voters. Under the *LAFCO* decision, the rational basis test would apply to a determination to reduce the voting area in district reorganizations unless the declared public interest underlying that determination has a real and appreciable impact upon the equality, fairness, and integrity of the electoral process, in which case the strict scrutiny test would apply. However, even under the rational basis test, a determination to reduce the area of election would be held invalid, according to *LAFCO*, if the determination constituted invidious discrimination in violation of the constitutional equal protection clause (e.g., involving a racial impact of some degree).

When basing a reduced election area on a rational state interest, the court in *LAFCO* would suggest that the legislative intent in promoting orderly school district reorganization statewide would be a legitimate public purpose to which a reduced voting area must have a fair relationship. Education Code Section 35500 provides that:

It is the intent of the Legislature to utilize the organization of districts as they exist on January 1, 1981, and the master plan for school district organization in each county, which was developed and approved under the provisions of this chapter as they existed prior to January 1, 1981, or any approved updated version of the master plan not inconsistent with other provisions of law, as the basis for future reorganization of districts in each county.

Preserving the concept of master planning and the current master plan allows planned, orderly community-based school systems that adequately address transportation, curriculum, faculty, and administration. This concept would include both:

- a. Avoiding the risk that residents of the area to be transferred, annexed, or unified might be unable to obtain the benefits of the proposed reorganization if it is unattractive to the residents of the remaining district *and*

- b. Avoiding islands of unwanted, remote, or poorly served school communities within large districts.

It is, therefore, recommended that, with considerable caution, the principles in the *LAFCO* decision be followed in determining the area of school district reorganization elections. The principles in the *Pasadena* case may also be followed but are not legally compelling.

This discussion of area of election determination constitutes an update of the legal opinion dated November 6, 1989, from the California Department of Education's Legal Office to the State Board of Education and the State Superintendent of Public Instruction.

#### **D. Election of a New Governing Board**

The plans and recommendations for a school district organization may include a provision that will provide for the election of the first governing board of a newly unified school district to be held at the same time as the election on the reorganization proposal. If the provision is included, the plans shall also specify the method to be utilized to stagger board members' terms. If such a provision is not provided, the election of the first governing board will take place on the first regular election following the passage of the reorganization proposal. (EC 35737, 35767)

The question of formation of a unified school district and any other proposition to be voted upon must appear on the ballot before the list of candidates for election to the governing board of the proposed unified school district. (EC 35767)

##### **1. New Governing Boards**

The term "governing board" means any board of trustees, community college board of trustees, and city, and city and county board of education. (EC 78)

##### **a. Roles and Responsibilities**

Every school district is under the control of a governing board. (EC 35010)  
The governing board of a school district may initiate and carry on any program, activity, or otherwise may act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which school districts are established. (EC 35160) The governing board of each district must prescribe and enforce rules not inconsistent with law, or with rules prescribed by the State Board of Education, for its own government. (EC 35010)

##### **b. Composition**

- i. Except as otherwise provided, the governing board of a school district must consist of five members elected at large by the qualified voters of the district. The terms of the members must, except as otherwise provided, be for four years and staggered so that as nearly as practicable one-half of the members must be elected in each odd-numbered year. (EC 35012)

- ii. A unified school district may have a governing board of seven members in the event that the proposal for unification has specified a governing board of seven members. The members of the board must be elected at large or by trustee areas as designated in the proposal for unification and must serve four-year terms of office. (EC 35012)
- iii. Notwithstanding item *a* above, *any* elementary school district having a governing board of three members *may*, and any elementary school district whose a.d.a. during the preceding fiscal year was 300 or more and having a governing board of three members *shall* do either of the following (EC 5018, EC 35012):
  - (a) By its own action determine that the number of members of the governing board shall be increased to five, in which case two additional members shall be elected at an upcoming regular election date, as specified in Section 1000 of the Elections Code, determined by the board.
  - (b) Request the county superintendent of schools having jurisdiction to submit the question of whether the number of members of the governing board shall be increased to five to the voters of the elementary school district at an upcoming regular election date, as specified in Section 1000 of the Elections Code, determined by the county superintendent of schools. At the same election, two additional members shall be elected to take office if the number of governing board members is increased.
- iv. Whenever the boundaries of a county high school district are coterminous with the boundaries of a county, the board must consist of one member from each supervisorial district in the county elected at large from the district. (EC 5027)
- v. For community college districts that were divided into five wards on or before September 7, 1955, one member of the board must be elected from each ward by the registered voters of the ward. On or before January 1 of a fiscal year, the governing board of the district may rearrange the boundaries of the wards to provide for representation in accordance with population and geographic factors or may abolish the wards. (EC 5028)
- vi. One or more nonvoting members may serve on governing boards in school districts maintaining one or more high schools. Such pupil members may be less than eighteen years of age and must be chosen by the pupils enrolled in the high school or high schools of the district in accordance with procedures prescribed by the governing board. The term of a pupil member must be one year commencing on July 1 of each year. (EC 35012)



c. Eligibility of Board Members

Any person, regardless of sex, who is eighteen years of age or older, a citizen of the state, a resident of the school district, and a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications. (EC 35107[a])

An employee of a school district may not be sworn into office as an elected or appointed member of that school district governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office. (EC 35107[b])

d. Terms of Office

The majority of the members of the first elected board of any newly formed school district who received the highest number of votes must serve until the first Friday in December of the second succeeding odd-numbered year. The other members' terms must expire on the first Friday in December of the first succeeding odd-numbered year. (EC 35105, 5017)

For those districts formed in even-numbered years where in connection with the formation of which the first governing board was elected in such even-numbered year, all of the members of the first elected governing board must serve until the first Friday in December of the second succeeding odd-numbered year. Their successors must be elected at an election conducted on the first Tuesday after the first Monday in November of such second succeeding odd-numbered year. The majority of such successors receiving the highest number of votes must serve until the first Friday in December of the second odd-numbered year. The other members' terms must expire on the first Friday in December of the first odd-numbered year. (EC 35558)

The governing board of a unified school district formed in an even-numbered year may adopt a resolution that will provide that the majority of the members of the governing board who received the highest number of votes in the first election of governing board members for the district must serve until the first Friday in December of the third odd-numbered year succeeding that first election, and the other members' terms must expire on the first Friday in December of the second odd-numbered year succeeding that first election. The resolution must be adopted on or before March 15 of the second odd-numbered year succeeding the first election of the governing board. (EC 3558[b])

e. No Election in Component Districts Pending Reorganization

Whenever a school district has been wholly absorbed into one or more other districts and continues in existence as a district until the reorganization in which it has been included is effective for all purposes and a governing board member election is otherwise required to be held prior to such effective date of the reorganization, no such election shall be held. Instead, the county superintendent

of schools must appoint successors to the members whose terms expire on the first Friday in December following the date upon which the election would otherwise have been held. Such appointees must hold office until the reorganization becomes effective. (EC 35557)

f. Concurrent Service of Board Members

When a member of the governing board of a school district that is being reorganized and that will cease to exist takes office as a member of the initial or interim governing board of a newly formed district, he or she must cease to be a member of the governing board of the district being reorganized. (EC 35106) It may be possible, however, for the board of the district to obtain a waiver from the State Board of Education allowing a member(s) to serve on both boards at the same time. Such waiver request must be made prior to the election because it is illegal to serve on two boards at the same time.

g. First Meeting of the New Board to Be Called by the County Superintendent of Schools

Within 20 days after the appointment or election of the interim or initial governing board of any newly formed school district, the county superintendent of schools must call the first meeting of the board. The meeting must be properly noticed in accordance with the Ralph M. Brown Act (Government Code 54950 et seq.), and, in addition, each member of the board must be given at least 10 days' notice of such meeting by registered mail. (EC 35102)

At the first meeting, board members are to be sworn in and must elect officers. At the first meeting, or as soon as practicable thereafter, the board must also name the district and shall select one of its members as its representative, who shall have one vote for each member to be elected to the county committee on school district organization. (EC 35000, 35023) Other actions should include setting the date, time, and place of regular meetings. Other items may be placed on the agenda as needed, including a closed session to discuss personnel matters. See Appendix L, "Sample Initial Agenda for the Governing Board of a New School District."

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